

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

- against -

Civil Action

No. CV- 07-0835

AGI-VR/WESSON COMPANY;
ALLOY CARBIDE COMPANY;
CHI MEI CORPORATION;
CLIMAX MOLYBDENUM COMPANY;
CLIMAX MOLYBDENUM MARKETING
CORPORATION;
COUNTY OF NASSAU, NEW YORK;
CYPRUS AMAX MINERALS COMPANY;
GENERAL ELECTRIC COMPANY;
GTE CORPORATION;
H.C. STARCK, INC.;
KENNAMETAL INC.;
M & R INDUSTRIES, INC.;
MINMETALS INC.;
OSRAM SYLVANIA CORPORATION;
PHILIPS ELECTRONICS NORTH
AMERICA CORPORATION;
SANDVIK AB;
TDY HOLDINGS, LLC; and
TDY INDUSTRIES, INC.,

(Seybert, J.)
(Orenstein, Ch. M. J.)

Defendants.

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APPENDIX E TO THE CONSENT JUDGMENT

APPENDIX E

STATEMENT OF WORK FOR 2005 RA **Li Tungsten Superfund Site**

I. WORK TO BE PERFORMED

The work set forth herein is to be performed by TDY Industries, Inc. and TDY Holdings LLC (hereinafter collectively referred to as the “Performing Settling Defendant”) pursuant to the Consent Judgment entitled United States v. Alloy Carbide Corporation, et al. (hereinafter, the “Consent Judgment”) to which this Statement of Work (“SOW”) is an appendix. The work, as defined below, shall at a minimum be consistent with and achieve the applicable requirements of that portion of the remedy selected by EPA in the March 30, 2005 Record of Decision (“2005 ROD”) for this Site (as attached as Appendix B to the Consent Judgment). With regard to the remedy selected in the 2005 ROD, Performing Settling Defendant shall not be responsible under the Consent Judgment for the dredging of those portions of the Glen Cove Creek required under the 2005 ROD nor the placement of the dredged material, or “spoils”, on land for dewatering. Performing Settling Defendant’s obligations under the Consent Judgment with regard to implementing the remedy set forth in the 2005 ROD shall not commence until after the materials have been dredged, placed upland, and sufficiently dewatered. Performing Settling Defendant shall be required, generally, to address the radioactively contaminated portions of the spoils by segregating and separating the radioactively contaminated portions from the spoils and thereafter properly disposing of those radioactively contaminated materials, consistent with the work plan to be developed by Performing Settling Defendant and approved by EPA under this SOW.

Specifically, the work required under this SOW (“Work”) shall include the following activities:

- development of an EPA-approved remedial action work plan (“2005 RA Work Plan”) for addressing radioactively contaminated spoils which will have been dredged in conformance with the requirements of the 2005 ROD;
- 100% instrument screening of the dewatered spoils for radioactivity associated with the contaminants of concern. These spoils are anticipated to be placed by EPA on Parcel A in the Fall 2006;
- segregation of the radioactively contaminated portions of the spoils which exceed the performance standards described in the 2005 ROD, the Consent Judgment, and this SOW; and
- proper off-site disposal of the radioactively contaminated portions of the spoils at an EPA-approved off-site facility.

II. PERFORMANCE STANDARDS

The Work to be performed shall comply with all cleanup criteria, including applicable or relevant and appropriate requirements (“ARARs”), that apply to the portion of the remedy set forth in the 2005 ROD which is being performed by Performing Settling Defendant, as those requirements are set forth in the 2005 ROD.

III. PROJECT SUPERVISION/MANAGEMENT; SUPERVISING CONTRACTOR

All aspects of the Work to be performed under the Consent Judgment shall be coordinated by a qualified project coordinator (in accordance with Section IX of the Consent Judgment). All aspects of the Work required to be performed under the Consent Judgment shall meet any and all requirements of applicable Federal, State of New York (“State”), and local laws; however, no permit shall be required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). To the extent that components of the Work require the practice of engineering, such components shall be performed under the direction and supervision of a qualified, State-licensed professional engineer.

Performing Settling Defendant has provided written notification to EPA and the State that it has chosen ECC as a Supervising Contractor to perform some of the Work, and ECC is approved. The selection of or change to any Supervising Contractor by Performing Settling Defendant other than ECC shall be subject to approval by EPA in accordance with Section IX of the Consent Judgment.

IV. REMEDIAL ACTION PLANNING

Upon entry of the Consent Judgment, Performing Settling Defendant shall submit to EPA (with a copy to the State) a detailed remedial action work plan (“2005 RA Work Plan”) for the performance of the Work set forth above within fifteen (15) days or March 1, 2007, whichever is later. The 2005 RA Work Plan shall be consistent with the 2005 ROD and the requirements of this SOW, including a detailed description of the activities, technical approach, operations, monitoring, and overall management strategy for the Work to be performed. Necessary procedures, inspections, reporting, deliverables, and schedules shall be specified. The 2005 RA Work Plan shall also identify the members of Performing Settling Defendant’s project team.

The 2005 RA Work Plan shall also include the following elements:

A. Schedule

Performing Settling Defendant shall include a schedule for Work activities commencing with the EPA notification to proceed date. The schedule shall include reporting requirements, initiation and completion of any critical path activities, project milestones and deliverables, as well as provide adequate review times for EPA where appropriate.

B. Site Management Planning

Performing Settling Defendant shall include Site management planning for any of the Work required to be performed at the physical Site location. Site management planning shall include, at a minimum, the following:

1. Typical operator schedules;
2. Provisions for security, decontamination facilities, construction trailers, equipment storage, contingency procedures, management responsibilities, and waste handling and disposal, as appropriate;
3. Appropriate coordination with local authorities, regarding contingency planning, utilities requirements, potential traffic issues, etc.;
4. Controlling access to the Site during the Work, including any periods of inactivity;
5. Demobilization procedures, including final site condition after completion of the Work; and
6. Procedures for any other relevant and necessary activities not covered under this 2005 RA Work Plan.

C. Waste Management Planning

Performing Settling Defendant shall include waste management planning for activities which generate disposable waste, including sampling, decontamination procedures, on-premise laboratory work, etc. Waste management planning shall also describe the management and disposal of any hazardous substances, pollutants, contaminants, or other waste materials that are encountered or generated during the remedial action.

D. Quality Assurance/Quality Control Project Planning

Performing Settling Defendant shall include quality assurance project planning for all sampling activities consistent with EPA Requirements for Quality Assurance Project Plans (QA/R5) (EPA/240/B-01/003, March 2001) and Section XI of the Consent Judgment. Such planning shall include or be in accordance with the following elements:

1. A detailed description of the sampling, analysis, and monitoring that shall be performed during RA activities, consistent with this SOW, the 2005 ROD, and the Consent Judgment.
2. Development of a Quality Assurance Project Plan ("QAPP") which shall specifically include the following items:

- a. An explanation of the way(s) the sampling, analysis, testing, and monitoring will produce data to demonstrate successful completion of the remedial action;
 - b. A detailed description of the sampling, analysis, testing and monitoring to be performed, including sampling methods, analytical and testing methods, sampling locations and frequency, instrument calibration and use, etc;
 - c. Appropriate graphical representations of sampling and monitoring details; and
 - d. A schedule for performance of specific tasks.
3. In the event that significant changes in sample numbers, locations, analyses, testing or monitoring are necessary, Performing Settling Defendant shall submit to EPA an addendum to the QAPP for approval by EPA.
4. The QAPP shall also address, as appropriate, project management, data quality objectives, measurement/data acquisition, and data validation and usability.
5. In order to provide quality assurance and maintain quality control with respect to all sampling, analysis, testing, and monitoring, Performing Settling Defendant shall ensure the following:
 - a. Quality assurance and chain-of-custody procedures shall be performed in accordance with standard EPA protocol and guidance, as described in Section XI of the Consent Judgment;
 - b. All laboratories to be used must be specified by Performing Settling Defendant and approved by EPA;
 - c. Any laboratory utilized for analyses of samples must perform all analyses in accordance with existing EPA methods;
 - d. Unless indicated otherwise in the EPA-approved QAPP, all data shall be validated upon receipt from the laboratory prior to submittal to EPA;
 - e. the validation package (checklist, report and Form I containing the final data) shall be submitted to EPA, prepared in accordance with the provisions of Paragraph IV.D.5.g., below;

- f. Unless indicated otherwise in the EPA-approved QAPP, Performing Settling Defendant shall require that the laboratory submit to EPA the full documentation (including raw data) for this analytical data. EPA reserves the right to perform an independent data validation, data validation check, or qualification check on generated data; and
- g. Performing Settling Defendant shall insert a provision in their contract(s) with the laboratory utilized for analyses of samples which will require granting access to EPA personnel and authorized representatives of EPA for the purpose of ensuring the accuracy of laboratory results related to the Site.

E. Health and Safety Planning

Concurrent with the submission of the 2005 RA Work Plan, Performing Settling Defendant shall provide for health and safety planning through development of a Health and Safety Plan (“HASP”) for all field activities performed under the Consent Judgment, to address the protection of public health and safety and the response to contingencies that could impact public health, safety, and the environment. At a minimum, the HASP shall satisfy the Occupational Safety and Health Guidance for Hazardous Waste Site Activities, (June 1990, DHHS NIOSH Publication No. 90-117), and other applicable requirements of the Occupational Safety and Health Administration, United States Department of Labor (“OSHA”). To the extent that a previously approved HASP for the Site can be amended and updated, EPA will consider it for approval.

All Site activities shall be performed in a manner which ensures the safety and health of personnel so engaged. All Site activities shall be conducted in accordance with all pertinent general industry (29 C.F.R. § 1910) and construction (29 C.F.R. § 1926) OSHA standards, and EPA’s Standard Operating Safety Guides (OSWER, 1988), as well as any other applicable State and municipal codes or ordinances. All Site activities shall comply with those requirements set forth in OSHA’s final rule entitled Hazardous Waste Operations and Emergency Response, 29 C.F.R. § 1910.120, Subpart H.

1. The HASP shall include, at a minimum, the following items:
 - a. Plans showing the location and layout of any temporary facilities to be constructed;
 - b. Description of the known hazards and evaluation of the risks associated with the Site and the potential health impacts related to Site activities;
 - c. List of key personnel and alternates responsible for Site safety,

response operations, and protection of the public;

- d. Description of levels of protection (based on EPA-approved standards) to be utilized by all personnel;
- e. Delineation of work, decontamination, and safe zones, and definitions of the movement of zones;
- f. Description of decontamination procedures for personnel and equipment, including handling and removal of disposable clothing or equipment;
- g. Incidental emergency procedures which address emergency care for personnel injuries and exposure problems, and containment measures. These procedures shall include evacuation routes, internal and external communications procedures for response to fire, explosion, or other emergencies, the name of the nearest hospital and the route to that hospital. Local agencies with the capability to respond to emergencies shall be identified, and their capabilities shall be described. A description of the procedures for informing the community of these measures shall be outlined;
- h. Description of the personnel medical surveillance program in effect;
- i. Description of monitoring for personnel safety;
- j. Description of routine and special personnel training programs; and
- k. Detailed description of an air monitoring program to determine concentrations of airborne contaminants and particulates to which Site workers and persons at and beyond the work Site boundary, including the nearby residential community, may be exposed.

- 2. EPA will review the 2005 RA Work Plan in accordance with the procedures set forth in Section XIV (EPA Approval of Plans and Other Submissions) of the Consent Judgment.

V. PERFORMANCE OF THE 2005 RA WORK

A. Upon EPA's written approval of the 2005 RA Work Plan and its notice to proceed, Performing Settling Defendant shall commence implementation of the Work described therein in accordance with the 2005 RA Work Plan schedule and consistent with the 2005 ROD and the Consent Judgment. EPA and Performing Settling Defendant

acknowledge and agree that EPA's notice to proceed will not require the commencement of implementation of the 2005 RA Work Plan before March 31, 2007.

B. During performance of the 2005 RA Work Plan, Performing Settling Defendant may identify and request EPA's approval of modifications to the 2005 RA Work Plan.

1. Proposed modifications to the 2005 RA Work Plan submitted to EPA for consideration must demonstrate that such modifications would enhance the cleanup or the monitoring of such cleanup.
2. EPA will either approve, require revision to, or disapprove any request for modifications in accordance with the procedures set forth in Section XIV (EPA Approval of Plans and Other Submissions) of the Consent Judgment.

VI. CERTIFICATION OF COMPLETION OF 2005 ROD REMEDIAL ACTION

A. Pre-final and Final Inspection. Within thirty (30) days after Performing Settling Defendant determines that it has completed the Work as set forth in the 2005 RA Work Plan, and subject to the timely availability of EPA and State personnel, Performing Settling Defendant shall schedule and conduct a final inspection to be attended by Performing Settling Defendant, and its contractor(s), EPA and its representatives, and the State. Such final inspection shall include a walk-through of the remedial action to verify its completeness. If EPA requires corrective actions to be performed by Performing Settling Defendant as a result of the inspection, the inspection will be deemed a pre-final inspection. Within thirty (30) days after completion of any required corrective measures, subject to the timely availability of EPA and State personnel, Performing Settling Defendant shall schedule and conduct follow-up inspections, as necessary, to be attended by Performing Settling Defendant, EPA and its representatives, and the State until no further corrective measures are required.

B. Remedial Action Report. After final inspection, Performing Settling Defendant shall submit a 2005 Remedial Action Report to EPA for the Work performed under the 2005 RA Work Plan for review and approval, with copies to the State, within thirty (30) days of the final inspection. The 2005 Remedial Action Report shall be in conformance with the document entitled "Remedial Action Report Guidance," dated June 1992, or any updates thereto. A duly authorized representative of the Supervising Contractor shall include in the Report a statement that remedial action work has been completed in full satisfaction of all requirements governing its completion, including the 2005 RA Work Plan, the 2005 ROD, and the Consent Judgment. The 2005 Remedial Action Report shall include, but not be limited to, the following elements:

1. Remedial Action Activities - Any revisions to the Remedial Action Report required by EPA shall be implemented in accordance with the procedures set forth in Section XIV of the Consent Judgment.
2. Performance Standards - Performing Settling Defendant shall provide documentation that all Performance Standards set forth in the 2005 RA Work Plan, the 2005 ROD, and the Consent Judgment have been met. Each Performance Standard shall be addressed by describing the Standard, the basis for determining that the Standard is met, the location and frequency of the tests, and the results of confirmatory sampling and analysis. Maps and cross-sections shall be included to depict the confirmatory sampling locations and sampling depths.
3. Construction Quality Control - Performing Settling Defendant shall provide documentation that Work was performed in accordance with all applicable or relevant and appropriate requirements set forth in the 2005 RA Work Plan, the 2005 ROD, and the Consent Judgment.
4. Documentation of 2005 Remedial Action Work - Performing Settling Defendant shall furnish photographs, slides, and/or videotapes as appropriate to EPA and the State that record the progress of the remedial action including, at a minimum, the important features of the Site prior to commencement of remedial action activities and the appearance of the Site after all such activities have been completed.
5. Pre-final and Final Inspections - The pre-final and final inspections conducted by Performing Settling Defendant, EPA, and the State at the completion of the Work shall be documented in the 2005 Remedial Action Report. A brief description shall be provided of any deficient construction items reported during the pre-final inspection and subsequently resolved prior to the final inspection, including detailed description of corrective measures undertaken by Performing Settling Defendant. A list of attendees at the inspection(s) shall also be included.
6. Certification – the 2005 Remedial Action Report shall include a certification statement, signed by a responsible corporate official of Performing Settling Defendant, which states the following:

“I certify under penalty of law that this document and all attachments were prepared under my direct supervision or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best

of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

7. Approval of the 2005 Remedial Action Report - EPA will either approve the draft 2005 Remedial Action Report, thus making it the final 2005 Remedial Action Report, or require modification of it in accordance with the procedures set forth in Section XIV (EPA Approval of Plans and Other Submissions) of the Consent Judgment.